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A Different Sort of Justice: The Informal Courts of Public Opinion in Antebellum South Carolina

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A DIFFERENT SORT OF JUSTICE: THE INFORMAL COURTS OF PUBLIC OPINION IN ANTEBELLUM SOUTH CAROLINA

ELIZABETH DALE*

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I. INTRODUCTION

On July 18, 1846, William Bailey walked away from a quarrel with Thomas Prince to join several friends gathered on a nearby piazza.¹ As Bailey stood chatting with others, Prince came up, cursed him, and accused him of cutting a button off his coat. Prince further demanded that the two resolve the matter with a fight, but when Bailey refused, he walked away. However, the issue did not end there. Jesse Bailey overheard the exchange and castigated his brother as a coward for refusing to fight Prince. Embarrassed before his friends, William Bailey tossed down his drink and followed Prince down the road.

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1. The summary of the fight in this paragraph is based on the coroner's record. See *State v. The Dead Body of William Bailey* (July 19, 1846), in *THE CORONER'S INQUISITION BOOK FOR EDGEFIELD DISTRICT, 1844-1850*, at 57-64, *microformed on* Roll No. ED 169 (South Carolina Department of Archives and History "SCDAH") [hereinafter *BAILEY CORONER'S RECORD*].

When he caught up with him, Bailey told Prince that they needed to talk, but Prince replied he had no interest in conversation. Once again, he accused Bailey of cutting the button off his coat; once again, Bailey denied having done so, though he added that if a button had come off, it had been by accident. Needless to say, Prince was unappeased and, shaking his left fist in Bailey's face, insisted that they fight. Suspicious, perhaps because Prince kept his right hand in his pocket, Bailey asked Prince if he was armed, a question Prince countered by asking Bailey the same thing. After Bailey declared that he was not, the two began to exchange insults until finally, after each called the other a liar, Bailey punched Prince. Prince then pulled his right hand, holding a knife, from his pocket and struck Bailey three "licks"—once in the side, once on the shoulder, and, finally, once across his throat. As blood gushed from Bailey's neck, several of his friends, who had wandered down from the piazza to watch the affray,² rushed to his side. One got there in time to catch him before he slumped to the road.³

Within minutes, Bailey was dead.⁴ The legal system reacted almost as quickly, but its ultimate response was tepid. At the coroner's inquest called later that day, the jury concluded that Prince murdered Bailey;⁵ shortly thereafter, the grand jury indicted Prince for murder.⁶ However, that fall, at trial before the Court of General Sessions in Edgefield, South Carolina, the jury found Prince guilty only of manslaughter.⁷ The trial judge, A. P. Butler, sentenced Prince to five years in the local jail and ordered him to pay a fine of \$100.00.⁸

From its start as a deadly battle over the loss of a button, to its end with Prince receiving a mild punishment after being found guilty of a lesser crime, *State v. Prince* is the type of case that led generations of legal historians to

2. Fights of this sort were typically called affrays, a term that was a holdover from English practice (and French law). Blackstone defined an affray as "the fighting of two or more persons in some public place, to the terror of his majesty's subjects." 4 WILLIAM BLACKSTONE, COMMENTARIES *145 (1769).

3. BAILEY CORONER'S RECORD, *supra* note 1.

4. *Id.*

5. *Id.*

6. True Bill, *State v. Thomas Prince* (Oct. 8, 1846), in MINUTES, COURT OF COMMON PLEAS AND GENERAL SESSIONS, EDGEFIELD DISTRICT, Spring Term 1846, *microformed on* Roll No. ED 85 (SCDAH).

7. Verdict, *State v. Thomas Prince* (Oct. 8, 1846), in MINUTES, COURT OF COMMON PLEAS AND GENERAL SESSIONS, EDGEFIELD DISTRICT, Fall Term 1846, *microformed on* Roll No. ED 85 (SCDAH).

8. Sentence, *State v. Thomas Prince* (Oct. 8, 1846), in MINUTES, COURT OF COMMON PLEAS AND GENERAL SESSIONS, EDGEFIELD DISTRICT, Fall Term 1846, *microformed on* Roll No. ED 85 (SCDAH). Two years into his sentence, Prince died in the jail of fever. See *State v. The Dead Body of Thomas Prince* (July 31, 1845), in THE CORONER'S INQUISITION BOOK FOR EDGEFIELD DISTRICT, 1844-1850, *microformed on* Roll No. ED 169 (SCDAH).

assert that South Carolina epitomized antebellum Southern lawlessness.⁹ In the first half of the nineteenth century, when states to the north increasingly relied on formal law as a means of social control¹⁰ and transformed their court systems,¹¹ shedding English practices¹² and systematizing their procedures,¹³ most southern states lagged behind. But none hung so far back as South Carolina. In the words of historian Michael Hindus, in antebellum South Carolina “the law did not reach many areas of life, institutions such as courts were kept weak, and local instruments of law enforcement ranged from ineffective to incompetent.”¹⁴ Hindus adds that such justice as there was in antebellum South Carolina was often extralegal and typically violent: “[P]lantation justice handled much slave crime; dueling substituted for some forms of litigation; mob activity policed city streets; vigilantes patrolled country bounds.”¹⁵

Recent studies of nineteenth century legal culture,¹⁶ North and South, have called parts of that picture into question,¹⁷ but the prevailing view of the legal culture of antebellum South Carolina remains unchanged—it was shaped by honor and marked by the hierarchical assumptions¹⁸ and extralegal violence

9. See, e.g., JACK KENNY WILLIAMS, *VOGUES IN VILLAINY* 16 (1959) (citing Bailey’s murder as an example of that lawlessness); see generally ORVILLE VERNON BURTON, *IN MY FATHER’S HOUSE ARE MANY MANSIONS* 90 (1985) (discussing violence and Southern honor in the context of a local study of Edgefield, South Carolina); MICHAEL STEPHEN HINDUS, *PRISON AND PLANTATION* (1980) (comparing South Carolina and Massachusetts to illustrate regional differences in Northern and Southern Criminal Law).

10. CHARLES SELLERS, *THE MARKET REVOLUTION* 54-55 (1991) (citations omitted).

11. See MORTON J. HORWITZ, *THE TRANSFORMATION OF AMERICAN LAW, 1780-1860* (1977); ALLEN STEINBERG, *THE TRANSFORMATION OF CRIMINAL JUSTICE: PHILADELPHIA, 1800-1880* (1989); Michael Millender, *The Transformation of the American Criminal Trial, 1790-1875* (1996) (unpublished Ph.D. dissertation, Princeton University) (on file with author).

12. WILLIAM E. NELSON, *AMERICANIZATION OF THE COMMON LAW* 1-10 (1975).

13. *Id.*; Millender, *supra* note 11.

14. HINDUS, *supra* note 9, at 1.

15. *Id.* at 36.

16. Throughout this Article I use the phrase “legal culture” to refer to the congeries of formal (i.e., court-based) and informal (or extralegal) means of achieving justice. See, e.g., CHRISTOPHER WALDREP, *ROOTS OF DISORDER* 2 (1998) (“The choices ordinary people make between formal law and vigilante justice can be called their legal culture. This includes concepts and habits of justice as well as understandings of the role and potency of formal and informal rules, rights, and authority.”).

17. See, e.g., PETER W. BARDAGLIO, *RECONSTRUCTING THE HOUSEHOLD* 11-12 (1995) (asserting that formal law played a larger role in the antebellum South than earlier studies had suggested and noting that neither violence nor lawlessness were unique to the South); SALLY E. HADDEN, *SLAVE PATROLS* 14-24 (2001) (discussing the organized nature of the slave patrols in South Carolina); see also ROGER LANE, *MURDER IN AMERICA* 92-145 (1997) (noting that the courts in the antebellum North were often tolerant of extralegal violence); ERIC H. MONKKONEN, *MURDER IN NEW YORK CITY* 151-79 (2000) (demonstrating that there was extralegal, often honor-based, violence in antebellum New York).

18. See, e.g., Laura F. Edwards, *Law, Domestic Violence, and the Limits of Patriarchal Authority in the Antebellum South*, 65 J. S. HIST. 733 (1999) (describing and analyzing racial and gender inequalities present in the antebellum Southern judicial system).

that honor engendered.¹⁹ In this Article, I offer a modification of that well-established account. While I do not question the influence of honor on South Carolina's antebellum legal culture, I suggest that the state had a second, shame-based system of popular justice, in which women played a prominent role.²⁰ As was the case with honor culture, this second form of extralegal justice, which I have dubbed the informal courts of public opinion,²¹ sometimes intersected with formal law, and other times worked independent of it.

II. BACKGROUND: THE STANDARD ACCOUNT OF HONOR'S INFLUENCE ON CRIMINAL JUSTICE IN ANTEBELLUM SOUTH CAROLINA

For over fifty years, scholars have asserted that the distinctive legal culture of the antebellum South rested on honor.²² Although a few have argued that honor completely supplanted law,²³ most have concluded that the situation was more complex, allowing law and honor to function both as independent sources of justice and as intersecting processes.²⁴

The relation between law and honor was particularly multifaceted in antebellum South Carolina. There the rituals and practices of honor culture

19. See discussion *infra* Part II.

20. See discussion *infra* Parts III, IV.

21. The workings of these courts resemble the forms of private, informal law enforcement methods that have been the subject of some recent legal scholarship. See, e.g., Walter O. Weyrauch, *Unwritten Constitutions, Unwritten Law*, 56 WASH. & LEE L. REV. 1211, 1215-20 (1999) (describing experiment analyzing potential growth of competing legal systems in prolonged space flights).

22. See, e.g., EDWARD L. AYERS, VENGEANCE AND JUSTICE 9-33 (1984) (noting that the honor culture bred in violence in the nineteenth-century South); BARDAGLIO, *supra* note 17, at 5-23 (discussing the making of Southern legal culture); ARIELA J. GROSS, DOUBLE CHARACTER 47-71 (2000) (discussing the "important cultural place" of honor in the Deep South); BERTRAM WYATT-BROWN, SOUTHERN HONOR 362-401 (1982) (discussing honor's role in a "Slavocracy"); Charles S. Sydnor, *The Southerner and the Laws*, 6 J. S. HIST. 3, 13 (1940) (discussing the "unwritten code" wherein Southerners found guidance).

23. Consider the conclusion of Edward Ayers, commenting on law in the antebellum South: Honor and legalism, as students of other honor-bound societies have observed, are incompatible: "to go to law for redress is to confess publicly that you have been wronged and the demonstration of your vulnerability places your honor in jeopardy, a jeopardy from which the 'satisfaction' of legal compensation in the hands of secular authority hardly redeems it." AYERS, *supra* note 22, at 20, & 284 n.27 (quoting Julian Pitt-Rivers, *Honour and Social Status*, in HONOUR AND SHAME: THE VALUES OF MEDITERRANEAN SOCIETY 19, 30 (J.G. Peristiany ed., 1965)); see also BURTON, *supra* note 9, at 90-95 (describing Southern honor in Edgefield, South Carolina); WYATT-BROWN, *supra* note 22, at 71 (asserting basis for Southern distrust of authority was the ethic of honor). Pitt-Rivers notwithstanding, students of other societies have found instances in which formal law was made part of an honor culture. See, e.g., Thomas W. Gallant, *Honor, Masculinity, and Ritual Knife Fighting in Nineteenth-Century Greece*, 105 AM. HIST. REV. 359, 369-71 (2000) (discussing intersection of criminal justice and honor in context of Ichia Island knife fighting).

24. See GROSS, *supra* note 22, at 53-57 (discussing the intersection of honor and law); WYATT-BROWN, *supra* note 20, at 362-401.

replaced law in some instances; thus, in the late 1820s, when Benjamin Perry, a Reconstruction Era governor of the state,²⁵ was a young man practicing law in the upstate, he challenged a newspaper editor whom he believed had falsely impugned his character to a duel rather than press legal action against him.²⁶ Perry won the duel, killing his opponent in the process,²⁷ but was neither prosecuted nor sued by his victim's family. Instead his victim's brother advised him that the family understood the duel was necessary.²⁸ In other instances, as *State v. Prince*²⁹ demonstrates, those who were involved in affairs of honor were brought to trial. In this second group of cases, honor often influenced interpretations of law by shaping the reactions of jurors and judges,³⁰ and often leading them to excuse, or punish weakly, conduct that law formally prohibited.³¹

Honor directed criminal justice in other, less obvious ways. Because the code of honor prescribed that affronts and attacks had to be punished through public acts of personal violence or humiliation,³² many of the punishments favored by South Carolina's courts emphasized corporal punishment or public embarrassment.³³ So too, assumptions dictated by honor helped to guarantee that both the formal and informal aspects of legal culture were controlled by men. Robert Nye observed the following about nineteenth-century France:

Women had no real place in this system of honor. They were only permitted to safeguard their sexual honor, which in truth belonged to their husbands, fathers, and brothers, who were ultimately responsible for its integrity and defense. . . . [W]ithout honor they could not, any more than a dishonored man, participate in most aspects of public life.³⁴

25. See A.B. Williams, *Benjamin Franklin Perry*, in 1 *CYCLOPEDIA OF EMINENT AND REPRESENTATIVE MEN OF THE CAROLINAS OF THE NINETEENTH CENTURY* 69, 72-73 (1892).

26. Benjamin Franklin Perry, *Diary*, 1832-1868, at Aug. 5, 1832, Aug. 11, 1832, Aug. 23, 1832, in *BENJAMIN FRANKLIN PERRY PAPERS* (Southern Historical Collection, University of North Carolina Library). Perry also caned a man who he deemed had insulted him. *Id.* at Aug. 2, 1832.

27. *Id.*

28. *Id.* Aug. 23, 1832.

29. See *supra* notes 2-9 and accompanying text.

30. See BARDAGLIO, *supra* note 17, at 5-23 (discussing the "vigorous attachment to the concept of honor").

31. See WILLIAMS, *supra* note 9, at 85. Williams found that guilty verdicts were entered in only thirty-nine percent of South Carolina's criminal cases in the antebellum era. *Id.*

32. On the public nature of honor, see Gallant, *supra* note 23, at 375 *passim*; WYATT-BROWN, *supra* note 22, at 45-48 (discussing in the Southern context). On the personal nature of honor claims in the South, see WYATT-BROWN, *supra* note 22, at 34-36. The violent aspect of honor culture is examined in AYERS, *supra* note 22, at 21-23.

33. See AYERS, *supra* note 22, at 42; WILLIAMS, *supra* note 9, at 100, 106-09.

34. ROBERT A. NYE, *MASCULINITY AND MALE CODES OF HONOR IN MODERN FRANCE*, at vii (1993).

Nye's observation applies equally well to historians' understanding of the place of women in the legal culture of South Carolina and the rest of the antebellum South. The courts were the exclusive preserve of men,³⁵ and while women were able to manipulate the law to achieve some protections in the area of domestic relations,³⁶ ultimately even those gains were limited, as law established male power more often than it constrained it.³⁷

A. Evidence of an Alternative Forum: Some Decisions by the Informal Court of Public Opinion

1. Columbia, South Carolina vs. James Henry Hammond

The prevailing image of the legal culture of antebellum South Carolina is far more complex than any comparable account of the legal culture in the antebellum North,³⁸ but their emphasis on honor has led students of Southern legal culture to overlook the evidence of the other extralegal process that functioned in the state in that period. In this second system, women not only judged but punished men and women for certain offenses.³⁹ One infamous incident from the history of antebellum South Carolina provides a preliminary snapshot of how this second system functioned.

In the early 1840s, while he served as governor of South Carolina, rumors swirled around the capital that James Henry Hammond was intimately involved with his unmarried teenage nieces, the daughters of the politically and socially prominent Wade Hampton II.⁴⁰ These rumors, which Hammond admitted in his diary were at least partly true,⁴¹ led him to leave Columbia for what he

35. WILLIAMS, *supra* note 9, at 83; WYATT-BROWN, *supra* note 22, at 281-91.

36. See BARDAGLIO, *supra* note 17, at 31.

37. Edwards, *supra* note 18, at 740.

38. Histories of the legal culture of the antebellum North have emphasized the workings of and changes in the formal legal system. See, e.g., STEINBERG, *supra* note 11 (outlining the history of criminal justice in Philadelphia); Millender, *supra* note 11, at 107-45 (describing New York City's legal culture from 1800-1825). As a result, the work on the legal culture of the North is not as nuanced as that which has been done on the antebellum South.

39. Edwards notes that women used informal social networks to try to challenge the authority of men, but does not develop the idea that these networks were effectively a legal system. See Edwards, *supra* note 18, at 741. *But cf.* STEPHANIE MCCURRY, MASTERS OF SMALL WORLDS 130-35 (1995) (recognizing the existence of one aspect of the informal courts—the church trial—but concluding via a case study of Lenore Kelly that it was a process controlled by men and used against women).

For a discussion of the concept of "legal systems" using that phrase to include extralegal systems of justice, see Lynn M. LoPucki, *The Systems Approach to Law*, 82 CORNELL L. REV. 479 (1997) (describing application of the system analysis in the law); see also Weyrauch, *supra* note 21 (exploring unwritten principles by which people in any organization govern themselves).

40. The matter is discussed, often obliquely, in Hammond's diary for the 1840s. See SECRET AND SACRED: THE DIARIES OF JAMES HENRY HAMMOND, A SOUTHERN SLAVEHOLDER 171-76 (Carol Bleser ed., 1988) (hereinafter SECRET AND SACRED).

41. See *id.* at 120.

characterized as exile to his plantation after his term as governor came to an end.⁴² According to his diary, until he left town, Hammond was shunned in the capital⁴³ and avoided by long time acquaintances.⁴⁴ In addition, he bitterly complained that people talked about him behind his back.⁴⁵ While the incident is often treated as an example of male honor culture,⁴⁶ that interpretation overlooks the details offered by Hammond in his diary, which highlights the role of women in his ordeal. He complained that two of his most virulent attackers, John Preston and Wade Hampton III, acted under the instigation of their wives.⁴⁷ He assumed that another man who attacked him, John Preston's brother William, did so at the behest of his wife, and recorded that both William and his wife denounced him publicly.⁴⁸ Looking back on the period towards the end of his diary, he blamed his treatment on "the Tea Table Goddesses"⁴⁹ and lamented that "all the women, and the nice men [still] shun me."⁵⁰ While Hammond never drew the connection between women and his treatment at the hands of his community, his account strongly implies that many of the men who shunned him did so under their wives' influence.

Hammond's description suggests an elaborate process that was outside the formal legal system, but was law-like in that it served to both judge and punish wrongdoing. It also provides a sense of the procedures of that extralegal system: During the judgment stage, the social networks (Hammond's "tea tables," which we know were maintained and dominated by women)⁵¹ spread word of his breach of acceptable conduct. In this initial period, the network weighed the evidence and determined whether it added up to an offense. Once the network determined that norms had been violated, the judgment stage was over and the punishment stage began. In this second period, the network issued a public denunciation, which informed the wrongdoer, in this case Hammond, of his community's disapproval and publicized the judgment against him. Publicity was, then, both a means of proclaiming the judgment of the court and a form of punishment. Other punishments were available as well: Hammond

42. *Id.* at 243.

43. *See id.* at 126-28.

44. *Id.* at 128.

45. *See id.* at 120; *see also* DREW GILPIN FAUST, *JAMES HENRY HAMMOND AND THE OLD SOUTH: A DESIGN FOR MASTERY* 241-45 (1982) (describing Hampton's "war of rumor and innuendo" against Hammond).

46. *See* BURTON, *supra* note 9, at 140; FAUST, *supra* note 45, at 243; KENNETH S. GREENBERG, *HONOR AND SLAVERY* 75-77 (1996).

47. SECRET AND SACRED, *supra* note 40, at 185.

48. *Id.* at 193.

49. *Id.* at 226.

50. *Id.* at 256.

51. The importance of visiting and women's networks has been established by many historians. *See, e.g.*, JEAN E. FRIEDMAN, *THE ENCLOSED GARDEN* 6 (1985) (discussing recent historical scholarship on this topic). Women also exchanged information and maintained their social networks through correspondence. *See generally* JANE H. PEASE & WILLIAM H. PEASE, *A FAMILY OF WOMEN: THE CAROLINA PETIGRUS IN PEACE AND WAR* (1999) (describing the history of a Southern family based in part on their correspondence).

was shunned by polite society as people avoided invitations to his home and ignored him on the streets.⁵² His ostracism was so complete that he was driven to retreat to his home in rural Silver Bluff.⁵³

Hammond's account not only suggests the existence of an extralegal system based on public opinion; it also reveals the role women played in the informal courts of that system. Women served as his prosecutors, his judges, and his jury, first determining when a violation of a community norm had occurred, and then setting the proper punishment. But while it indicates that women were a driving force in the process, Hammond's description suggests that they did not work alone. Instead, women worked in tandem with their male relatives—husbands typically, but also sons and sometimes fathers—to enforce the punishment (shaming, shunning, or exile) the informal court deemed proper.

2. *Edgefield, South Carolina vs. Eliza Posey*

In the Hammond case, the informal court acted in place of formal law. In other cases, it functioned as a compliment, or supplement, to the formal law. Such was the case in Edgefield, South Carolina in 1849.⁵⁴

On Friday, February 16, 1849, Matilda, wife of Martin Posey, vanished, having last been seen in mid-afternoon directing the work of family slaves on the Posey plantation.⁵⁵ She was found just over a week later, buried in a shallow grave in some wooded land on her husband's property.⁵⁶ While she was missing, rumors circulated wildly,⁵⁷ but the day her body was uncovered, suspicion in the community specifically turned to one of Posey's slaves, named App, who had purportedly run away after confessing to another slave that he had committed the murder.⁵⁸ Yet a month later, a decomposing body identified as App's was accidentally discovered in a nearby county.⁵⁹

By that point, if not before, Martin Posey, long distrusted in the community because he drank⁶⁰ and admitted to beating his wife,⁶¹ became a

52. See SECRET AND SACRED, *supra* note 40, at 126.

53. See *id.* at 243; BARDAGLIO, *supra* note 17, at 4.

54. The details of the case come from Report of the Trial of Martin Posey (1850) (unpublished manuscript, available at South Caroliniana Library, University of South Carolina) [hereinafter Posey Trial]. Two other summaries of the trials, which differ in some respects from the Report, are part of the decisions of the South Carolina Court of Appeals in the Posey case. See *State v. Posey*, 35 S.C.L. (4 Strob.) 103 (1849) (appeal from the conviction in the Matilda Posey murder); *State v. Posey*, 35 S.C.L. (4 Strob.) 142 (1849) (appeal from the conviction for the murder of App).

55. Posey Trial, *supra* note 54, at 12-13.

56. *Id.* at 18-19.

57. See *id.* at 4.

58. *Id.* at 18-19.

59. *Id.* at 54 n.*.

60. *Id.* at 22, 32, 58.

61. Posey Trial, *supra* note 54, at 22.

suspect. He had not enhanced his already dubious reputation by becoming obviously infatuated with Matilda's younger sister, Eliza,⁶² who, although she was still under eighteen at the time of the murder, had already been married and widowed.⁶³ Within a day of the identification of App's body, Posey's overseer, Wilson Kirkland, was arrested.⁶⁴ Kirkland promptly accused Posey of having App murder Matilda (so that Posey could marry Eliza) and then murdering App.⁶⁵ That night Martin and Eliza were found hiding at Martin's father's house and were arrested.⁶⁶ Subsequently, Martin's father Francis and his younger brother Elbert were arrested as accessories to the murder of App.⁶⁷ In October 1849, Martin Posey was brought to trial twice, once for Matilda's murder;⁶⁸ the second time, along with his brother and father, for the murder of App.⁶⁹ He was convicted both times and sentenced to death.⁷⁰ His convictions and sentences were upheld on appeal,⁷¹ and he was hanged in the courthouse square in Edgefield, on February 1, 1850.⁷² No one else was convicted in connection with either murder. Both Posey's brother and father were found not guilty,⁷³ and no charges were ever pressed against Eliza Posey, who had married Martin sometime after their arrests.⁷⁴

The failure to convict, or even indict, Eliza seems to confirm that formal law, influenced by the gendered assumptions of honor culture, could not conceive of women as legal actors. The anonymous editor of a report on the Posey trials initially suggested that Eliza's treatment at the hands of the court proved precisely that. After noting that "[i]t is a saying in Edgefield and elsewhere, that if a man have money, he may do any thing and not be hanged for it, but let him kill his wife here, and the gold of California cannot buy eloquence enough to save him,"⁷⁵ he added that women were different: they were never punished severely, even when wives were found guilty of killing their husbands.⁷⁶ Yet no sooner had he made that claim, the anonymous author backtracked. He admitted that although formal law chose to ignore her, that did

62. *Id.* at 32, 39.

63. *Id.* at 12.

64. *See id.* at 26.

65. *Id.* at 21 n.*, 32-35.

66. *Id.* at 27-28.

67. Posey Trial, *supra* note 54, at 6.

68. *Id.* at 9-10 (reprinting indictment).

69. *Id.* at 53 (reprinting indictment).

70. Posey Trial, *supra* note 54, at 40-42; *see also* *Trial of Martin Posey*, EDGEFIELD ADVERTISER (S.C.), Oct. 10, 1849, at 2 (reporting verdict in Matilda Posey murder); *State Trials*, EDGEFIELD ADVERTISER (S.C.), Oct. 17, 1849, at 2 (reporting verdict in App murder).

71. *State v. Posey*, 35 S.C.L. (4 Strob.) 103, 141 (1849); *State v. Posey*, 35 S.C.L. (4 Strob.) 142, 166-167 (1849).

72. EDGEFIELD ADVERTISER (S.C.) Feb. 6, 1850, at 2.

73. Posey Trial, *supra* note 54, at 71.

74. *See id.* at 6.

75. *Id.* at 5.

76. *Id.* at 6-7.

not mean Eliza would escape unpunished.⁷⁷ And other evidence, from outside the court system, suggests that she did not. Although other young widows in late antebellum Edgefield lived alone with their children,⁷⁸ by December 1849 Eliza Posey had been stripped of her adult status and reduced to her cousin's ward.⁷⁹ She had no access to her inheritance, except for what she received as an allowance or her guardian agreed to pay towards her expenses,⁸⁰ nor was she given custody of her stepchildren, who were instead living with their paternal grandfather, Frank Posey.⁸¹ Eliza's separation from Martin's children had the appearance of punishment: even if the arrangement reflected the fact that Frank Posey could support four very young children,⁸² that does not explain why Eliza could not live with her stepchildren at Frank Posey's, as Posey's widowed daughter, Elizabeth Ashbel, and her daughter, Pearlina, had done since Elizabeth's husband died.⁸³

The contrast between her condition before the murders and her situation in 1850 strengthens the conclusion that Eliza Posey was being punished. There is no evidence that she had been made anyone's ward⁸⁴ after her father died in 1847, or after she became a widow the first time in 1848. Indeed, the fact that she moved in with Posey within days of Matilda's disappearance⁸⁵ implies that as a young widow she had considerable (one might even say extraordinary) freedom and independence.⁸⁶ After the murder trial, her position, to say nothing of her allowance, was comparable to that of her youngest brother, Stingleton, who was also their cousin's ward⁸⁷ and who, as a sixteen-year-old

77. *Id.* at 7.

78. See the entries for Jane West, Martha Hobbs, and Nancy Logan, in POPULATION SCHEDULES FOR THE SEVENTH CENSUS OF THE UNITED STATES: EDGEFIELD AND FAIRFIELD COUNTIES, SOUTH CAROLINA (1850), *microformed on* Roll No. 852, Microcopy No. 432 (The Nat'l Archives 1964) [hereinafter 1850 CENSUS].

79. Guardian Accounts Filed by Erasmus McDaniel on Behalf of Eliza Posey (1850-1851), in Guardian Accounts, Edgefield County, South Carolina, at 204-05, 251, 445-46, *microformed on* Roll No. ED 79 (SCDAH) [hereinafter Guardian Accounts]. She apparently lived with her uncle, Levi McDaniel, who was Erasmus' father. See *id.*; 1850 CENSUS, *supra* note 78 (entry for Levi McDaniel).

80. See Guardian Accounts, *supra* note 79.

81. 1850 CENSUS, *supra* note 78 (entry for Frank Posey).

82. Frank Posey was well off. According to the 1850 Census his land holdings alone were worth \$12,000. *Id.*

83. See *id.*

84. Her older brother, Gabriel Holmes, served as guardian ad litem for Eliza and her minor siblings during some litigation over their father's estate, but there is no indication that his guardianship extended beyond that matter. See Commissioner's Minutes, Edgefield, South Carolina (Nov. 15, 1847), *microformed on* Roll No. ED 171, at 51 (SCDAH).

85. Posey Trial, *supra* note 54, at 35.

86. She also traveled around quite a bit before she moved in with Posey. Gabriel Holmes testified that before the murder Eliza had visited friends and then visited Martin and Matilda. See *State v. Posey*, 4 S.C.L. (4 Strob.) 103, 105 (1849).

87. Guardian Accounts, *supra* note 79, at 445-46.

schoolboy,⁸⁸ had far fewer claims than she to the rights and privileges of adulthood. In slightly more than a year, Eliza escaped the situation the only way she knew how: sometime around February 1851 she married Harry Bush,⁸⁹ and shortly thereafter they apparently moved away from South Carolina.⁹⁰

Her reduction in status and separation from her stepchildren, to say nothing of her quick remarriage and reputed move away from Edgefield, suggests that Eliza was judged and punished informally by her community, even though the formal processes of law ignored her. And in his introduction to the report on Posey's trial, the anonymous author predicted that might happen. Having noted that "the men [had] forgiven Eliza Posey,"⁹¹ he explained that her fate was thus left in the hands of the women of the community, who would judge her conduct and decide what, if anything, should be done to her.⁹² He urged them to treat Eliza leniently, and forgive her, rather than "persecute her to the grave, [or] drive her to despair."⁹³ He added that he hoped they would "endeavor to reform her, to console her, to soothe her remorse and to make her the adopted mother of her sister's fatherless, motherless, penniless, and injured children."⁹⁴ Eliza's circumstances until her marriage to Harry Bush suggests that the women of Edgefield ignored his pleas.

3. *Further Evidence of the Informal Courts*

As is the case with honor culture, the records of the decisions of South Carolina's informal courts of public opinion are usually buried in antebellum diaries, letters, and works of literature. But even a quick glance at a few sources of that sort reveals references to the informal courts. These examples reinforce the impressions given by the Hammond and Posey cases, demonstrating that the informal courts encompassed women and men, and were exercised in the Low Country, Midlands, and Upstate, and sometimes even beyond the state's borders.

Thus, in journals she kept of her travels in 1850-51, Jane Caroline North noted a judgment that "they" had entered against the ne'er do well son of a family acquaintance, and observed that it meant the ostracism of the mother as well as the son.⁹⁵ She also recounted an incident when the "Carolina Ladies"

88. The 1850 Census lists sixteen-year-old Stillman as a farmer, but also indicates that he had been in school most of the preceding year. See 1850 CENSUS, *supra* note 78 (entry for Levi McDaniel).

89. See Guardian Accounts, *supra* note 79, at 445-46.

90. Handwritten notation, in Holmes Surname File (available at Tompkins Library, Edgefield, South Carolina).

91. Posey Trial, *supra* note 54, at 7.

92. *Id.*

93. *Id.*

94. *Id.*

95. *The Journals of Jane Caroline North, 1851-1852*, in AN EVENING WHEN ALONE: FOUR JOURNALS OF SINGLE WOMEN IN THE SOUTH, 1827-1867, at 190 (Michael O'Brien ed., 1993).

organized the boycott of a ball that featured President Millard Fillmore in protest of his politics.⁹⁶ In his journal, Benjamin Perry likewise reported instances when women of the upstate shunned him,⁹⁷ or publicly condemned his conduct.⁹⁸ Similarly, there were passing references to judgments (sometimes entered by women of the family against other family members) interspersed in the letters and writings of the Pettigru family.⁹⁹ Additionally, the correspondence of Marion Converse revealed how her network of friends and family helped her drive her husband, Augustus, out of the state after their separation.¹⁰⁰ Ironically, even James Henry Hammond recognized the power of the court of public opinion, writing, in his defense of slavery, that white men who had notorious affairs with enslaved women lost their social positions and were shunned.¹⁰¹

Literary sources contain additional references to the informal courts. For example, the antebellum novels of Charleston native Susan Petigru King made frequent references to women who passed judgment on the behavior of others during conversations¹⁰² and described the power those women had to punish those they decided had breached proper standards.¹⁰³ King's books also confirm the breadth of the informal court's jurisdiction: some of the judgments she described were entered by women against other women,¹⁰⁴ some against men,¹⁰⁵ some judgments were reached and publicized during teas,¹⁰⁶ others through letters exchanged between friends and family.¹⁰⁷

These different references to informal judgments at the hands of public opinion make it clear that women were not simply the passive objects of South Carolina's antebellum legal culture, but, in some instances at least, had a far reaching power to judge and punish as part of a system of law. In that system,

96. *Id.* at 167.

97. Perry, *supra* note 26, at Nov. 23, 1832.

98. *Id.* at Oct. 4, 1840.

99. PEASE & PEASE, *supra* note 51, at 162 (describing judgment by women of family against Sue Petigru King); *see also id.* at 54 (referring to Sue Petigru King's short story, *Gossip*, which recounts an incident in which a similar sort of moral judgment was made).

100. *See* discussion in Edwards, *supra* note 18, at 745-46 & n.18 (citations omitted).

101. James Henry Hammond, *Letters of James Henry Hammond to Thomas Clarkson on Slavery, 1845*, in PRO SLAVERY ARGUMENT AS MAINTAINED BY THE MOST DISTINGUISHED WRITERS OF THE SOUTHERN STATES 119 (reprint 1968) (1852).

102. *See, e.g.*, SUSAN PETIGRU KING, *Lily: A Novel*, in GERALD GRAY'S WIFE; AND LILY: A NOVEL 13 (Duke University Press 1993) (describing women at tea discussing a younger woman's behavior); *id.* at 86-87 (describing widespread discussion of one young woman's illicit flirtation with a known rogue).

103. *See id.* at 133. King clearly did not approve of the power of gossip networks. In *Lily* the main character in the novel (who is a good and moral woman) speaks out against gossip even as a young girl. *Id.* at 13.

104. *See id.* at 13, 86-87.

105. *Id.* at 86; *see also* SUSAN PETIGRU KING, *Gerald Gray's Wife*, in GERALD GRAY'S WIFE; AND LILY: A NOVEL 372-79 (Duke University Press 1993) (letter criticizing man's behavior).

106. KING, *Lily*, *supra* note 102, at 13, 133-34.

107. KING, *Gerald Gray's Wife*, *supra* note 105, at 372-79.

women's networks functioned as informal courts that worked alongside the formal legal system. Together with formal law and honor culture these informal courts helped make up an elaborate matrix of social control, which made antebellum South Carolina far from the lawless place it is often characterized as having been.

III. SOURCES OF AUTHORITY

One question, however, remains: what was the source of women's authority to engage in this sort of judgment and punishment? This is simultaneously a question about the basis of women's power to judge and punish, and a question about the source of the norms that their judgments enforced.¹⁰⁸

One possibility is that the informal court of public opinion represented the female side of honor culture. Under this theory, men judged some instances of dishonor and typically resorted to violence to punish them;¹⁰⁹ women judged other types of dishonor, using shame to punish them. Such an explanation would expand the notion of antebellum Southern honor considerably. By bringing women into the "honor group"¹¹⁰ for the first time, it would markedly alter our understanding of their role in antebellum society.¹¹¹ Indeed, this interpretation is consistent with the findings in some recent works that women did play active and public roles in the antebellum period in politics,¹¹² religion,¹¹³ and reform movements.¹¹⁴ In addition, it would coincide with recent works demonstrating that women in other honor cultures did participate in those cultures' processes of judgment and punishment.¹¹⁵ Likewise, this interpretation would square with the evidence that in the seventeenth and

108. On the multifaceted nature of legal authority, see JOSEPH VINING, *THE AUTHORITATIVE AND THE AUTHORITARIAN* (1986).

109. Though there is some evidence men also resorted to shunning. See MICHAEL WAYNE, *DEATH OF AN OVERSEER* 18-19 (2001).

110. The phrase "honor group" is used by anthropologists to describe the "set of people who follow the same code of honor and who recognize each other as doing so." FRANK HENDERSON STEWART, *HONOR* 54 (1994).

111. Cf. AYERS, *supra* note 22, at 13 (women, children, and slaves had no honor).

112. See, e.g. ELIZABETH R. VARON, *WE MEAN TO BE COUNTED* (1998) (arguing elite and middle-class women played an active role in Southern political life in the context of a Virginia case study).

113. See, e.g., CATHERINE A. BREKUS, *STRANGERS AND PILGRIMS: FEMALE PREACHING IN AMERICA 1740-1845* (1998) (recounting stories of early female preachers).

114. BRUCE DORSEY, *REFORMING MEN AND WOMEN* (2002) (analyzing gender in antebellum reform movement).

115. See THOMAS W. GALLANT, *EXPERIENCING DOMINION* 149-74 (2002) (analyzing women, slander, and criminal justice); Gallant, *supra* note 23, at 376-77 (analyzing women's use of slander laws to affect criminal justice in Greece); see also Unni Wikan, *Shame and Honour: A Contestable Pair*, 19 *MAN* 635 (1984) (describing relationship of shame and honor for women in the Middle East).

eighteenth centuries, women in the United States used shame and shaming to discipline men and women.¹¹⁶

In support of this interpretation, there is some evidence that women participated in South Carolina's antebellum honor culture. In letters, women from antebellum South Carolina sometimes spoke in terms of their honor,¹¹⁷ and in his diary, Benjamin Perry noted a few occasions when he represented women who brought lawsuits to avenge their honor.¹¹⁸ Yet while it is certainly possible that women derived their authority to judge and shame from honor culture, certain aspects of that explanation remain unsatisfactory.

One is a problem of power: it is unclear, for example, why Hammond, who was certainly familiar with honor culture and worried about it in the context of the Hampton incident, was unable to recognize that his shame was being orchestrated by women in his community. His failure to do so suggests that he did not understand that the court functioned as part of the honor culture, and this raises questions about whether women really were considered part of the honor group in antebellum South Carolina. Another problem with this explanation relates to sources of law: the offenses with which the informal court concerned itself, which usually involved licentiousness and immorality, were not the stuff of honor culture. While honor, as Bertram Wyatt-Brown has argued, was an ethic,¹¹⁹ setting out guidelines for behavior, its precepts were not typically moral, and frequently ran counter to the teachings of the churches.¹²⁰ The informal courts' focus on moral issues was, to this extent, inconsistent with the thrust of honor culture, which also makes it unlikely that honor provided the source of women's authority to judge and punish.

A second possible answer is suggested by a comment by the famous historian of Southern women's history, Anne Firor Scott. In her path-breaking study of elite white women in the South, Scott asked: "What were they afraid of, these would-be patriarchs who threatened to withdraw their love from women who disagreed with them or aspired to any forbidden activity?"¹²¹ She answered herself, "Partly, perhaps, [they feared] that the women to whom they had granted the custody of conscience and morality might apply that conscience to male behavior—to sharp trading in the market, to inordinate addiction to alcohol, to nocturnal visits to the slave quarters."¹²² The examples from antebellum South Carolina suggest there was no "perhaps" about it: women did sit in moral judgment.

116. See WYATT-BROWN, *supra* note 22, at 39-40; Mary Beth Norton, *Gender and Defamation in Seventeenth-Century Maryland*, 44 WM. & MARY Q. 3, 19-22, 36-39 (1987).

117. See PEASE & PEASE, *supra* note 51, at 43.

118. Perry, *supra* note 26, at Feb. 9, 1846.

119. WYATT-BROWN, *supra* note 22, at 3-4.

120. *Id.* at 99-105.

121. ANNE FIROR SCOTT, *THE SOUTHERN LADY: FROM PEDESTAL TO POLITICS, 1830-1930*, 19 (1970).

122. *Id.*

As Scott's comment suggests, contemporary accounts repeatedly affirmed that women in the antebellum South had a special moral capacity,¹²³ and the idea that women had a unique moral understanding shaped one South Carolinian's interpretation of another famous judgment by women.¹²⁴ On New Year's Day, 1829, John Eaton, Andrew Jackson's political protégé, married Margaret Timberlake, a widow who, rumor had it, had been sexually promiscuous (with Eaton as well as others) during her previous marriage.¹²⁵ In the months preceding the wedding, Eaton complained that "the whispers of those city gossipers who attend to every body's reputation[,] character[,] & business to the neglect of their own" became increasingly focused on his forthcoming marriage.¹²⁶

Talk continued after the Eatons returned to the capital from their wedding trip, and worsened when Jackson announced that he was appointing Eaton Secretary of War. When one high-ranking official, Colonel Nathan Towson, the army paymaster, tried to suggest to Jackson that hostility to the marriage made Eaton a poor choice for cabinet officer, Jackson snubbed him, announcing he had no intention of consulting "the ladies of Washington" about his cabinet choices.¹²⁷ His failure to do so destroyed his cabinet, as members of his administration ostracized the Eatons, ultimately forcing Jackson to request that every member of his cabinet, including Eaton, resign.¹²⁸ From our perspective, it is significant that while the campaign against the Eatons was led by the women of Washington society, most accounts agree that the crucial first moment arose when Floride Calhoun, wife of Vice President John C. Calhoun, refused to return the Eaton's formal visit to her home.¹²⁹

123. See, e.g., PEASE & PEASE, *supra* note 51, at 83 (describing Mitchell King's view that women had a "higher morality" than men). Likewise, Robert Allston noted women's special moral power. See *id.* at 113.

124. See generally CATHERINE ALLGOR, *PARLOR POLITICS* 190-238 (2000) (describing the John Eaton affair in the context of women's social authority); JOHN F. MARSZALEK, *THE PETTICOAT AFFAIR* (1997) (describing Eaton affair in the context of entrenched elite).

125. For two recent accounts that offer very different interpretations of the event, see MARSZALEK, *supra* note 124, and ALLGOR, *supra* note 124, at 190-238.

126. MARSZALEK, *supra* note 124, at 46 (alteration in original).

127. *Id.* at 65. Others have criticized Marszalek's analysis of the incident, noting there are alternative interpretations. See, e.g., Norma Basch, *Family Values and Nineteenth-Century American Politics*, 26 *REV. IN AM. HIST.* 687, 691-92 (1998) (arguing Marszalek fails to appreciate the "gendered nature of politics"). Basch cites one work in particular, Kirsten E. Wood, "One Woman So Dangerous": *Gender and Power in the Eaton Affair*, 17 *J. OF THE EARLY REPUBLIC* 237 (1997), arguing that it provides a more persuasive interpretation. *Id.* at 691.

128. See ALLGOR, *supra* note 124, at 208.

129. See MARGARET L. COIT, *JOHN C. CALHOUN* 198-200 (1950). Catherine Allgor refers to Floride Calhoun's act as "one impetus" in the battle. ALLGOR, *supra* note 124, at 203. Marszalek emphasizes that Floride Calhoun left Washington before the contretemps got under way, but still credits her role as an aidor and abbeter. See MARSZALEK, *supra* note 124, at 54, 73.

In a statement he prepared to justify his role in the controversy,¹³⁰ Calhoun characterized his wife's decision not to make the visit as the product of careful deliberation. When the Eatons called on the Calhoun house together one afternoon they were received by Mrs. Calhoun, but that evening Mrs. Calhoun decided not to return their call.¹³¹ As she explained that decision to her husband, she felt it was not her place to judge Margaret Eaton's morality, since she was a not a permanent part of Washington society, but she did feel some sort of judgment was needed.¹³² She refused to lend countenance to the Eatons by returning their visit until the ladies of Washington society decided whether Margaret Eaton would be accepted into their number or shunned as punishment for her past. Upon being advised of her views, John agreed to defer to her judgment, even though he "foresaw the [political] difficulties"¹³³ that would arise. He explained that he accepted her decision because he felt that matters of this sort were best left to women,¹³⁴ adding that the "question involved," which he clarified to mean the issue of moral standards,¹³⁵ was "paramount to all political considerations."¹³⁶

What was the source of this moral insight? In his discussion of Calhoun's conduct in the Eaton affair, Merrill Peterson concluded that his reaction was influenced by the ideas of William Paley.¹³⁷ Paley argued in *The Principles of Moral and Political Philosophy* that morally pure women should avoid immoral women.¹³⁸ But Paley's suggestion that virtuous women should withdraw from unsavory company does not correspond to Calhoun's description of his wife's reaction. Floride Calhoun was not content to merely avoid the Eatons. She awaited a judgment on their conduct and a ruling that determined how they should be treated. Nor were the women who Hammond

130. JOHN C. CALHOUN, *Reply to John H. Eaton's Address*, in 6 PAPERS OF JOHN C. CALHOUN 474-82 (Clyde Wilson ed., 1978).

131. *Id.* at 476. In his reply, Calhoun expressly denied Eaton's claim that Floride Calhoun had visited the Eatons first, leaving her card. *Id.* at 475. Marszalek disputes this, and strongly suggests that Floride Calhoun did visit first, though he concedes in his footnotes that the evidence is not conclusive either way. MARSZALEK, *supra* note 124, at 54-55, 249 n.19. The situation is not quite as unclear as he suggests, as Calhoun noted in his reply, the established protocol was that people visited the Vice President first, and only then did the Vice President or his wife return the call. It is somewhat unlikely that Floride Calhoun would have initiated a visit in that circumstance. See CALHOUN, *supra* note 130, at 476.

132. CALHOUN, *supra* note 130, at 476-77.

133. *Id.* at 476.

134. *Id.* at 481.

135. *Id.* at 477. Marszalek quotes Calhoun's reference to morality, but interprets it to mean that "[t]he Eaton Affair was a social, not a political, matter." MARSZALEK, *supra* note 124, at 196. Notwithstanding that interpretation, contemporaries understood the matter involved a *moral* judgment. See John Quincy Adams' assessment of Calhoun's position, *quoted in* ALLGOR, *supra* note 124, at 208.

136. CALHOUN, *supra* note 130, at 477.

137. MERRILL D. PETERSON, *THE GREAT TRIUMVIRATE: WEBSTER, CLAY, AND CALHOUN* 183-84 (1987).

138. WILLIAM PALEY, *THE PRINCIPLES OF MORAL AND POLITICAL PHILOSOPHY* 223 (1785).

complained of content to passively withdraw from his presence; some, notably the wife of William Preston, sought him out to denounce his conduct. These women actively judged and condemned moral failings.

Similarly, the writings of another antebellum novelist from South Carolina, William Gilmore Simms, credited women with a special power to actively judge and explicitly tied that power to religion. In one of Simms' early novels, *Guy Rivers*, the hero, Ralph Colleton, had many good qualities, but frequently misinterpreted situations and people, to the extent that he had to depend on a variety of women to negotiate the morally proper path.¹³⁹ Significantly, given Hammond's inability to recognize women's judgment, while Colleton needed women's help, he was completely oblivious to the fact he did so. Colleton denied that women had the power to offer moral judgment because their susceptibility rendered them incapable of evaluating public conduct.¹⁴⁰ But not all men in the book had similar blind spots. Guy Rivers, the villain of the piece, was an outlaw who rejected both formal laws and the customary standards of his community. He was brought to judgment by the actions of three women and recognized the moral strength of each.¹⁴¹ Significantly, the strongest moral authority in *Guy Rivers* was Lucy Munro, and Simms made it clear that her moral wisdom came from two sources: she had been well educated when she was a child,¹⁴² and she complimented the lessons of her education with piety as an adult.¹⁴³ In his later books, Simms made the connection between religion (specifically protestant Christianity) and women's moral wisdom explicit, offering a number of female characters whose piety shames and guides men to proper behavior.¹⁴⁴

This idea that pious Christian women had unique moral insight, which empowered them to judge moral failing, was also a theme in a spiritual biography, written in the early nineteenth century by Moses Waddel, president of the University of Georgia,¹⁴⁵ Presbyterian minister,¹⁴⁶ and teacher, relative,

139. WILLIAM GILMORE SIMMS, *GUY RIVERS: A TALE OF GEORGIA* 92-93 (John Caldwell Guilds ed., University of Arkansas Press 1993) (1835) (describing scene where Lucy Monroe recognizes Rivers' evil; Colleton does not); *id.* at 144-46 (same); *id.* at 223-28 (describing where Lucy Monroe has to stand up to Rivers to protect Colleton). The other women in the novel, Colleton's cousin Edith, who was also his fiancée, and Ellen, Rivers' mistress, also revealed moral insight and wisdom superior to that of the men in the book. *See id.* at 429 (Edith corrects Ralph's errors with respect to Lucy.); *id.* at 445-48 (Ellen compels Rivers to understand his failings.).

140. *See id.* at 179.

141. SIMMS, *supra* note 139, at 225, 359-63, 445-48.

142. *Id.* at 95.

143. *Id.* at 120.

144. Simms' later novels made the case for religion even more strongly. *See, e.g.*, WILLIAM GILLMORE SIMMS, *EUTAW: A SEQUEL TO THE FORAYERS* 84, 88, 101 (1853) (exploring religious aspect of Ellen Flynn's goodness); *id.* at 250-51 (education not enough, it must have a moral, specifically religious basis).

145. THOMAS WALKER REED, *HISTORY OF THE UNIVERSITY OF GEORGIA* 182 (1949), <http://dlg.galileo.usg.edu/reed/>.

146. PETERSON, *supra* note 137, at 20.

and mentor of John C. Calhoun.¹⁴⁷ The biography, of a young woman named Carolyn Smelt,¹⁴⁸ offered a powerful version of women's moral authority that emphasized active judgment. Smelt died before she reached twenty, but from her earliest age she had a strong religious sensibility.¹⁴⁹ She found dancing class unpleasant when she was virtually a toddler,¹⁵⁰ a horse race made her sick when she was no more than eight,¹⁵¹ and, although tempted by vanity when she was in her teens,¹⁵² she quickly saw and rejected the evils in a life of ambition¹⁵³ and indulgence.¹⁵⁴ This revealed her natural moral sensibility, and from her earliest years others respected and deferred to it.¹⁵⁵ But it was not until she actively embraced religion that Carolyn began to judge others. Then, she made up for lost time, remonstrating with her friends, her parents, and anyone else who happened upon her, denouncing them for indulgent behavior.¹⁵⁶ Waddel ascribed to Smelt a role as judge and justified her power to do so from her piety and the tenets of evangelical Protestantism.¹⁵⁷

Read together, Simms' description of the moral authority wielded by devout women, Waddel's account of Carolyn Smelt's power to judge moral error, and Calhoun's deference to his wife's moral judgment, offer the key to the informal courts' authority. In the process, they suggest that at some level the informal courts of public opinion had their roots in the evangelical tradition,¹⁵⁸ which was, of course, quite strong in antebellum South Carolina.

That influence was marked in several ways: practices of the "court" resembled the disciplinary practices of evangelical congregations, particularly in Southern states, where the various denominations, Methodist, Baptist, and Presbyterian, used shame as both a process of judgment and a means of punishment.¹⁵⁹ As was the case with the informal courts, when shaming itself

147. *Id.* at 20-21.

148. MOSES WADDEL, MEMOIRS OF THE LIFE OF MISS CAROLYN ELIZABETH SMELT (New York, Daniel Fanshaw 1818).

149. *Id.* at 11.

150. *Id.* at 15.

151. *Id.* at 17-18.

152. *Id.* at 26-27.

153. *Id.* at 27.

154. WADDEL, *supra* note 148, at 34-35.

155. *Id.* at 21, 34.

156. *Id.* at 65, 69, 81, 87-88, 89-90, 97-98.

157. For other hints that pious women had a recognized power to judge, see the obituaries of pious women set out in the Edgefield newspaper. *Obituary*, EDGEFIELD ADVERTISER (S.C.), May 17, 1938, at 3; *Obituary*, EDGEFIELD ADVERTISER (S.C.), Aug. 30, 1838, at 3; *Obituary*, EDGEFIELD ADVERTISER (S.C.), Dec. 20, 1838, at 3; *see also The Mother*, EDGEFIELD ADVERTISER (S.C.), Feb. 9, 1837, at 1.

158. BREKUS, *supra* note 113, at 147-52 (discussing the role of evangelical churches in shaping notions of female moral power in the antebellum era).

159. There were, of course, evangelical churches in the North in this period, and those churches also made a point of church discipline. *See generally* BARBARA LESLIE EPSTEIN, THE POLITICS OF DOMESTICITY 24-30 (1981) (outlining goals and means of church discipline in eighteenth century New England); SUSAN JUSTER, DISORDERLY WOMEN 75-107 (1994) (examining meaning and exercise of internal discipline in evangelical churches in years following

was not enough, some denominations excommunicated offenders, exiling them from their community and from fellowship of any sort with church members, who were advised to shun the excommunicated in all but the most essential dealings.¹⁶⁰ Evangelical teachings also provided a justification for women speaking out against moral errors,¹⁶¹ in effect taking a role as judge. While women's role in church discipline has been subject to considerable dispute among historians,¹⁶² studies have suggested that among Southern evangelicals, perhaps far more than among their Northern counterparts, women were seen as "protector[s] of morality" who had, "[b]y virtue of divine creation," the "duty of preserving the home and its school of virtue."¹⁶³

This explanation also helps explain why some, like Hammond, were oblivious to the court's workings. While many evangelicals shared Waddel's conviction that women had an innate moral sense far stronger than that given to men, there was little agreement within denominations or among evangelicals as a whole about what this entailed.¹⁶⁴ Some held that women's moral capacity gave them the duty to advise men and offer them the moral guidance they needed since they lacked a strong internal moral compass. Others believed women's authority was properly limited to children, giving women a duty to instruct their young in order to help them develop moral sensibilities. Evangelical views provided a basis of gender expectations, and those expectations in turn authorized women to judge morality. But because there

Awakening in New England).

160. See GREGORY WILLS, *DEMOCRATIC RELIGION* 41-46 (1997).

161. See BREKUS, *supra* note 113, at 274-75.

162. There is a range of theories of the role of women in evangelical church discipline. Some emphasize the extent to which women were punished by churches. See, e.g., FRIEDMAN, *supra* note 51, at 14-18 (analyzing role of women in church by punishment statistics); JUSTER, *supra* note 159, at 106 (comparing gender disparities in church disciplinary proceeding). This interpretation is challenged in BREKUS, *supra* note 113, at 152 (arguing "pious females" were essential part of church's authority). Likewise, the issue of whether Northern and Southern evangelicals had different practices is also sharply contested. Compare Edward R. Crowther, *Holy Honor: Sacred and Secular in the Old South*, 58 J. S. HIST. 619, 620 (1992) (urging Southern distinctiveness), with Frederick A. Bode, *The Formation of Evangelical Communities in Middle Georgia: Twiggs County, 1820-1861*, 60 J. S. HIST. 711, 714 n.4 (1994) (denying distinctiveness), and JOHN W. QUIST, *RESTLESS VISIONARIES: THE SOCIAL ROOTS OF ANTEBELLUM REFORM IN ALABAMA AND MICHIGAN* 80-82 (1998) (surveying literature exploring role of women in benevolence movements).

The stronger argument seems to be that the degree of autonomy and authority evangelical women had depended on the congregation. See, e.g., BREKUS, *supra* note 113, at 131 (asserting role of women in church was shaped by their "distinctive cultural environments"); BURTON, *supra* note 9, at 132-33 (describing examples of Southern women assuming leadership roles in church); WILLS, *supra* note 160, at 50-60 (exploring role of women in different religious sects); Frederick Bode, *A Common Sphere: White Evangelicals and Gender in Antebellum Georgia*, 79 GA. HIST. Q. 775, 780-88 (1995) (exploring the role of women in the Georgia church).

163. WILLS, *supra* note 160, at 56.

164. See generally *id.* at 50-59 (describing various ideas of the appropriate role of women); see also BREKUS, *supra* note 113, at 131 (same).

was no single evangelical view of women, their authority to render judgment remained ambiguous.¹⁶⁵

This is not to say that the informal court of public opinion was run out of the evangelical church; rather, evangelical notions about the moral sense of women went beyond evangelical circles to shape the way that Southern society viewed women and their role in society. Evangelical ideas could have this influence because their reach extended far into antebellum Southern society. While many white leaders in antebellum South Carolina were not evangelical, but rather counted themselves as Episcopalian (a complicated idea itself, since there were evangelical Episcopalians), a number attended evangelical church even as they held membership in a local Episcopal church.¹⁶⁶ Others who remained outside the church were influenced by family members and mentors who were evangelical, or by evangelical materials published in local papers and journals.¹⁶⁷ Hammond and the Calhouns are cases in point. Hammond was no evangelical, but while he rented a pew at an Episcopal church in Columbia, he also attended Baptist and Methodist services with some frequency and had been to evangelical revivals in his youth.¹⁶⁸ His view of women's moral capacity was consistent with what we might call a weak evangelical approach;

165. Thus, the Mountain Creek Baptist Church of Edgefield charged men with investigating disciplinary matters, but the congregation as a whole, a group that included women, determined the discipline for church members. *See, e.g.*, Mountain Creek Baptist Church Records, 1835-1854, Meeting of February 22, 1834, in THE BAPTIST HISTORICAL COLLECTION (Furman University, Greenville, South Carolina) (Committee of two men, James and Simpson Mathis, asked to investigate report about church member D.H. Jones. Committee of three men, J. Still, B. Ledsoe, and J. Rambo, asked to look into reports about Monk and Steven, slaves. One man, Trapp, asked to look into reports about Nancy Mars); *id.* at Meeting of March 22, 1834 (Church congregation met, forgave D.H. Jones. Dismissed Nancy Mars. Case of Steven, slave, put over.); *id.* at Meeting of June 21, 1834 (Steven, slave, expelled.). *See* the discussion of the range of church practices in Edgefield, South Carolina, in BURTON, *supra* note 9, at 132-33. Leading ministers in the Baptist Church were divided on the issue of women's participation, with Jesse Mercer, of Georgia, arguing that women should be active participants in church discipline, and J.A. Wynne, also of Georgia, arguing that they should not be allowed to speak in disciplinary sessions. This debate is set out in WILLS, *supra* note 160, at 51-52, 55-59; *see generally id.* at 11, 50-51; Bode, *The Formation of Evangelical Communities*, *supra* note 162, at 724 (discussing women's role in Sunday schools); Bode, *A Common Sphere*, *supra* note 162, at 783 (describing different roles of women in different churches); *id.* at 787-88 (describing different education theories of different evangelicals); *id.* at 795-96 (describing reform activity by some evangelical women).

166. There were, of course, evangelical Episcopalians, typically called "low church Episcopalians." *See generally* DIANE HOCKSTEDT BUTLER, *STANDING AGAINST THE WHIRLWIND* (1995) (recounting history of Evangelical party in the Episcopal church).

167. BURTON, *supra* note 9, at 68-69; *see also* Bode, *A Common Sphere*, *supra* note 162, and Bode, *Formation of an Evangelical Community*, *supra* note 162 (examining structure and format of evangelical churches in Georgia). For a demonstration of the significance of class in Northern evangelical circles, *see*, for example, EPSTEIN, *supra* note 159, at 90 *passim*. Richard Rankin argued that there were class distinctions that kept elites out of the evangelical churches in North Carolina, but he concedes that elite women had connections to evangelical religion. RICHARD RANKIN, *AMBIVALENT CHURCHMEN AND EVANGELICAL CHURCHWOMEN* 173-74 (1993).

168. FAUST, *supra* note 45, at 262-63.

he accepted that it was his wife's job to instruct their children in moral behavior,¹⁶⁹ even as he apparently denied she had any right to judge his own.

Where Hammond's blinkered view of women's capacity for moral judgment suggested he had absorbed a limited sense of the moral authority of women, others took from evangelism a stronger view. Neither Calhoun was evangelical; he was a skeptic, she an Episcopalian. Yet both had close ties to evangelicals—John to his teacher Moses Waddel, and both John and Floride to her mother, an increasingly active evangelical.¹⁷⁰ Their reactions during the Eaton affair, in particular their assumption that women were not merely preceptors of moral virtues but judges of moral errors, rested on the strong sense of woman's moral role, very similar to that described by Waddel in his spiritual biography of Carolyn Smelt.

IV. CONCLUSION

These cases suggest that informal courts of public opinion existed as a site of extralegal justice in antebellum South Carolina. The existence of these courts requires a reconsideration of the conventional account of the legal culture of the state, since these courts run counter to the conventional emphasis on honor and its depiction of a system mostly in the control of men. In addition, to the extent that these courts derived their authority and their view of justice from evangelical ideals, they raise a question, hitherto unexamined by legal historians, about the extent to which Protestant ideals influenced the formal law within the state. In either event, by complicating the picture we have of the legal culture of antebellum South Carolina, these cases help to weaken the simplistic notion that antebellum South Carolina was merely lawless.

169. *Id.* Drew Gilpin Faust concludes that Hammond rejected the teachings of evangelical religion. *Id.* The complexities of Hammond's beliefs are discussed in Crowther, *supra* note 162, at 625-27 (suggesting, following Faust, that Hammond's attitude toward evangelical religion reflected his sense that it was taking power from elite men).

170. Of course, this is not to say that the Calhouns embraced evangelical ideals. As Nivens notes in his study of Calhoun, both John and Floride were less than happy about her mother's embrace of evangelism. JOHN NIVEN, JOHN C. CALHOUN AND THE PRICE OF UNION 104 (1988).

